

ASSEMBLY BILL

No. 1018

Introduced by Assembly Member Emmerson

February 22, 2007

An act to amend Section 13304 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1018, as introduced, Emmerson. Porter-Cologne Water Quality Control Act: waste cleanup.

The Porter-Cologne Water Quality Control Act requires a person who discharges waste into the waters of the state in violation of waste discharge requirements or other order or prohibition issued by a California regional water quality control board or the State Water Resources Control Board to clean up the waste or to abate the effects of the waste. The act authorizes the regional board to expend available money to perform any cleanup, abatement, or remedial work required under those circumstances.

This bill would make technical, nonsubstantive changes to the provision of law authorizing the regional board to expend money under specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13304 of the Water Code is amended to
2 read:
3 13304. (a) Any person who has discharged or discharges waste
4 into the waters of this state in violation of any waste discharge

1 requirement or other order or prohibition issued by a regional board
2 or the state board, or who has caused or permitted, causes or
3 permits, or threatens to cause or permit any waste to be discharged
4 or deposited where it is, or probably will be, discharged into the
5 waters of the state and creates, or threatens to create, a condition
6 of pollution or nuisance, shall upon order of the regional board,
7 clean up the waste or abate the effects of the waste, or, in the case
8 of threatened pollution or nuisance, take other necessary remedial
9 action, including, but not limited to, overseeing cleanup and
10 abatement efforts. A cleanup and abatement order issued by the
11 state board or a regional board may require the provision of, or
12 payment for, uninterrupted replacement water service, which may
13 include wellhead treatment, to each affected public water supplier
14 or private well owner. Upon failure of any person to comply with
15 the cleanup or abatement order, the Attorney General, at the request
16 of the board, shall petition the superior court for that county for
17 the issuance of an injunction requiring the person to comply with
18 the order. In the suit, the court shall have jurisdiction to grant a
19 prohibitory or mandatory injunction, either preliminary or
20 permanent, as the facts may warrant.

21 (b) (1) The regional board may expend available money to
22 perform any cleanup, abatement, or remedial work required under
23 the circumstances set forth in subdivision (a), including, but not
24 limited to, supervision of cleanup and abatement activities~~that~~
25 *which*, in its judgment, is required by the magnitude of the
26 endeavor or the urgency for prompt action to prevent substantial
27 pollution, nuisance, or injury to any waters of the state. The action
28 may be taken in default of, or in addition to, remedial work by the
29 waste discharger or other persons, and regardless of whether
30 injunctive relief is being sought.

31 (2) The regional board may perform the work itself, or with the
32 cooperation of any other governmental agency, and may use rented
33 tools or equipment, either with operators furnished or unoperated.
34 Notwithstanding any other provisions of law, the regional board
35 may enter into oral contracts for the work, and the contracts,
36 whether written or oral, may include provisions for equipment
37 rental and in addition the furnishing of labor and materials
38 necessary to accomplish the work. The contracts are not subject
39 to approval by the Department of General Services.

1 (3) The regional board shall be permitted reasonable access to
2 the affected property as necessary to perform any cleanup,
3 abatement, or other remedial work. The access shall be obtained
4 with the consent of the owner or possessor of the property or, if
5 the consent is withheld, with a warrant duly issued pursuant to the
6 procedure described in Title 13 (commencing with Section
7 1822.50) of Part 3 of the Code of Civil Procedure. However, in
8 the event of an emergency affecting public health or safety, the
9 regional board may enter the property without consent or the
10 issuance of a warrant.

11 (4) The regional board may contract with a water agency to
12 perform, under the direction of the regional board, investigations
13 of existing or threatened groundwater pollution or nuisance. The
14 agency's cost of performing the contracted services shall be
15 reimbursed by the regional board from the first available funds
16 obtained from cost recovery actions for the specific site. The
17 authority of a regional board to contract with a water agency is
18 limited to a water agency that draws groundwater from the affected
19 aquifer, a metropolitan water district, or a local public agency
20 responsible for water supply or water quality in a groundwater
21 basin.

22 (c) (1) If the waste is cleaned up or the effects of the waste are
23 abated, or, in the case of threatened pollution or nuisance, other
24 necessary remedial action is taken by any governmental agency,
25 the person or persons who discharged the waste, discharges the
26 waste, or threatened to cause or permit the discharge of the waste
27 within the meaning of subdivision (a), are liable to that
28 governmental agency to the extent of the reasonable costs actually
29 incurred in cleaning up the waste, abating the effects of the waste,
30 supervising cleanup or abatement activities, or taking other
31 remedial action. The amount of the costs is recoverable in a civil
32 action by, and paid to, the governmental agency and the state board
33 to the extent of the latter's contribution to the cleanup costs from
34 the State Water Pollution Cleanup and Abatement Account or other
35 available funds.

36 (2) The amount of the costs constitutes a lien on the affected
37 property upon service of a copy of the notice of lien on the owner
38 and upon the recordation of a notice of lien, that identifies the
39 property on which the condition was abated, the amount of the
40 lien, and the owner of record of the property, in the office of the

1 county recorder of the county in which the property is located.
2 Upon recordation, the lien has the same force, effect, and priority
3 as a judgment lien, except that it attaches only to the property
4 posted and described in the notice of lien, and shall continue for
5 10 years from the time of the recording of the notice, unless sooner
6 released or otherwise discharged. Not later than 45 days after
7 receiving a notice of lien, the owner may petition the court for an
8 order releasing the property from the lien or reducing the amount
9 of the lien. In this court action, the governmental agency that
10 incurred the cleanup costs shall establish that the costs were
11 reasonable and necessary. The lien may be foreclosed by an action
12 brought by the state board on behalf of the regional board for a
13 money judgment. Money recovered by a judgment in favor of the
14 state board shall be deposited in the State Water Pollution Cleanup
15 and Abatement Account.

16 (d) If, despite reasonable effort by the regional board to identify
17 the person responsible for the discharge of waste or the condition
18 of pollution or nuisance, the person is not identified at the time
19 cleanup, abatement, or remedial work is required to be performed,
20 the regional board is not required to issue an order under this
21 section.

22 (e) “Threaten,” for purposes of this section, means a condition
23 creating a substantial probability of harm, when the probability
24 and potential extent of harm make it reasonably necessary to take
25 immediate action to prevent, reduce, or mitigate damages to
26 persons, property, or natural resources.

27 (f) Replacement water provided pursuant to subdivision (a) shall
28 meet all applicable federal, state, and local drinking water
29 standards, and shall have comparable quality to that pumped by
30 the public water system or private well owner prior to the discharge
31 of waste.

32 (g) (1) Any public water supplier or private well owner
33 receiving replacement water by reason of an order issued pursuant
34 to subdivision (a), or any person or entity who is ordered to provide
35 replacement water pursuant to subdivision (a), may request
36 nonbinding mediation of all replacement water claims.

37 (2) If so requested, the public water suppliers receiving the
38 replacement water and the persons or entities ordered to provide
39 the replacement water, within 30 days of the submittal of a water

1 replacement plan, shall engage in at least one confidential
2 settlement discussion before a mutually acceptable mediator.

3 (3) Any agreement between parties regarding replacement water
4 claims resulting from participation in the nonbinding mediation
5 process shall be consistent with the requirements of any cleanup
6 and abatement order.

7 (4) A regional board or the state board is not required to
8 participate in any nonbinding mediation requested pursuant to
9 paragraph (1).

10 (5) The party or parties requesting the mediation shall pay for
11 the costs of the mediation.

12 (h) As part of any cleanup and abatement order that requires
13 the provision of replacement water, a regional board or the state
14 board shall request a water replacement plan from the discharger
15 in cases where replacement water is to be provided for more than
16 30 days. The water replacement plan is subject to the approval of
17 the regional board or the state board prior to its implementation.

18 (i) A “water replacement plan” means a plan pursuant to which
19 the discharger will provide replacement water in accordance with
20 a cleanup and abatement order.

21 (j) This section does not impose any new liability for acts
22 occurring before January 1, 1981, if the acts were not in violation
23 of existing laws or regulations at the time they occurred.

24 (k) Nothing in this section limits the authority of any state
25 agency under any other law or regulation to enforce or administer
26 any cleanup or abatement activity.

27 (l) The Legislature declares that the amendments made to
28 subdivision (a) of this section by Senate Bill 1004 of the 2003–04
29 Regular Session do not constitute a change in, but are declaratory
30 of, existing law.